

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 894 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BANK OF BARODA

Versus

CHANDULAL KURJI

Appearance:

MR SURESH M SHAH for Petitioner

UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 05/09/97

ORAL JUDGEMENT

1. The petitioner who is a scheduled nationalised bank has instituted Civil Suit No.77/90 in the court of Civil Judge (SD) Rajkot to recover various amounts under the facilities granted to loanees or borrowers. The respondent No.4 is a guarantor in the said transaction and by application-Exh.18 he applied to the court that he should be supplied the copies of documents which are

produced by the bank along with the list to the suit and on such application which is given at Exh.18 trial court has by its judgment and order dated 31.1.1994 granted the application and has directed that the petitioner should supply copies of documents at Marks 4/7 & 4/13 which were the letters of guarantee and mark 4/19 which was notice allegedly given to the guarantor which was returned back to the bank without its acceptance. He has thus asked for copies three documents. The trial court has by impugned order dated 31.1.1994 upheld such request and directed the bank to supply said documents.

2. Being aggrieved thereby the bankers preferred the present CRA.

3. Mr.S.M.Shah, Id.advocate for plaintiff-bank has vehemently urged before this court that the judgment and order passed by the 4th Civil Judge (SD) Rajkot below Exh.18 is not sustainable in law inasmuch as there is no obligation on the plaintiff in law to supply such copies of documents on which plaintiff relies. Plaintiff is required to produce along with plaint the list of documents and copies of documents but there is no obligation on the part of the plaintiff to supply copies of documents to the defendants. It may be so. However, when the guarantor by request calls upon the bank to supply copies of three documents so that he can submit his defence and when the trial court has granted such request in its exercise of discretion ordinarily would be loath to interfere with such discretionary order. Mr.Shah has however relied upon the decision of the Apex Court in the case of SMT.SAHODRABAI RAI vs RAMSING reported in AIR 1968 SC 1079 . Three judge bench of the Supreme Court has in para 11 thereof made certain observations on which reliance is placed. Said para 11 is stated herein

"Under the Code of Civil Procedure a suit is commenced by a plaint. This is provided by O.VI R.1 which says that every suit shall be instituted by presenting a plaint to the court. After the plaint is received O.5 provides the summoning of the defendants in the case and R.2 of that order says that every summons shall be accompanied by a copy of the plaint, and if so permitted, by a concise statement. We then turn to the provisions of O.7 which deals with the contents of a plaint. The first rule mentions the particulars which must be in a plaint. It is not necessary to refer to them. The plaint has

to be signed and verified. Rule 9 then provides that the plaintiff shall endorse on the plaint and annex thereto a list of documents, if any, which he has produced along with it, and if the plaint is admitted, shall present as many copies on plaint paper of the plaint as there are defendants unless the court by reason of the length of the plaint or the number of defendants, or for any other sufficient reason permits him to present a like number of concise statement of the nature of the claims made etc. It will be noticed here that what is required to be provided are copies of the plaint itself or the concise statement according to the number of defendants. There is no mention here of any other documents of which a copy is needed to be presented to the court for service to the defendants. Then we come to Rule 14 which states that where a plaintiff sues upon a document in his possession or power shall produce it in court when the plaint is presented and shall at the same deliver the document or a copy thereof to be filed with the plaint. It will be noticed that is required to file only one copy of the document and not as many as copies as there are defendants in the case. It would therefore follow that a copy of a document is not expected to be delivered with the copy of the plaint to the answering defendants when summons is served on them. In the schedules to the code of civil procedure we have got appendix B which prescribes the forms for summons to the defendants. There is only one form of summons in appendix B (Form No.4) in which the copy of the negotiable instrument is to accompany the copy of the plaint. That is so, because of the special law applying to the negotiable instruments and the time limit within which pleas to that document have to be raised and this is only in summary suit. No other form makes any mention of any document accompanying the summons with the copy of the plaint. We need not go into more details. It is clear that the documents which are filed with the plaint have to be accompanied by one copy of those documents. This is because the copy is compared with the original and the copy is endorsed by the clerk of court and the document is sometimes returned to the party to be produced into court later. The copy takes the place of the document concerned and is not to be sent out to the parties with the plaint".

4. Irrespective of question as to whether there is any obligation on the part of the plaintiff to supply copies of documents or not, in my opinion when the defendant for the purpose of producing his defence or submitting his written statement calls upon the nationalised bank to give all copies of documents to the guarantor making provision for costs of copying such documents would suffice. Guarantor may or not be in possession of such documents, and he may therefore for the purpose of putting his defence require copies of such documents. The trouble of deciding such issue the court can always direct by making necessary provision for costs and in my opinion in this CRA instead of prolonging the litigation it would be wiser to call upon the defendant to pay costs to the bank and to direct the bank to supply the legible xerox copies or photostat copies of documents in question. The order of the trial court is therefore sustained by modifying it to the extent that legible xerox copies or photostat copies of the documents in question will be supplied to the guarantor at his cost and the order of the trial court is substituted to the aforesaid extent and on guarantor depositing the costs with the bank the bank shall supply the copies of documents in question.

5. In the result, CRA partially succeeds to the aforesaid extent only. Rule is made absolute accordingly. No costs.

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